Criminal Appeal No.217-DB of 1998

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Date of decision: November 23,2007.

Satnam Kaur and another **...** Appellants.

VERSUS

State of Punjab **...** Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr.Baldev Singh, Senior Advocate, with
Mr.Anhul Singh, Advocate,
for the appellants.

Mr. V.K. Jindal, Additional Advocate General, Punjab.

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MOHINDER PAL, J.

Appellants Satnam Kaur and Balwinder Singh Sandhu have preferred this appeal against the judgment of conviction and sentence order dated April 01, 1998, passed by the learned

Criminal Appeal No.217-DB of 1998

Additional Sessions Judge, Hoshiarpur. Each of the appellant was convicted under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as `the Code') and sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for two years.

2. This case was registered on the basis of statement (Exhibit P.E) of Gurdev Singh (complainant-P.W.2) made by him on June 20, 1997 before Inspector Nirmal Singh (P.W.7). As per his statement, he and his elder brother Balihar Singh (hereinafter referred to as the deceased) were doing agricultural work and were residing separately along with their families in the village. Accused-appellant Balwinder Singh Sandhu used to visit the house of the deceased for the last four/five years. On June 19, 1997, Balwinder Singh Sandhu came to the house of the deceased at about 6.30 P.M. He heard `Raula' in the house of the deceased. He went upstairs and saw that accused-appellant Satnam Kaur had caught hold of his brother from his shoulder and Balwinder Singh Sandhu was pouring some liquid in the month of the deceased with the help of a glass. Thereafter the deceased went to his `Haveli' and Satnam Kaur also followed him. The complainant also went there. There he saw that the deceased was lying on the ground and was crying for help. He was demanding water. After that, he became unconscious. In the meantime, one Jarnail Singh son of Duman Singh brought a glass of water so as to give the same to the deceased, but Satnam

Kaur threw that water and did not give it to the deceased. Accused Balwinder Singh Sandhu and Satnam Kaur then took the deceased towards Garhshankar in car. On June 20, 1977, Gurdev Singh came to know that his brother had died. Complainant expressed doubt that some poisonous substance had been administered to his brother Balihar Singh by accused Balwinder Singh Sandhu and Satnam Kaur. On the basis of this statement, First Information Report (Exhibit P.E/2) was registered.

3. After completion of investigation, challan was presented against the accused.

4. Charge against both the accused was framed under Section 302 read with Section 34 of the Code. They did not plead guilty to the charge and claimed trial.

5. At the trial, the prosecution examined Dr.Jagjit Singh, Senior Medical Officer, Primary Health Centre, Possi (P.W.1), Gurdev Singh, complainant (P.W.2), Jaspal Singh (P.W.3), Sub Inspector Harbhajan Dass (P.W.4), Manmohan Kumar, Constable (P.W.5), Nishan Singh, Constable (P.W.6), Inspector Nirmal Singh, Investigating Officer (P.W.7) S.S. Saini, Draftsman (P.W.8) and Amarjit Singh, Constable (P.w.8). Thereafter, the prosecution closed its evidence.

6. After the closure of prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which they denied the prosecution allegations and pleaded innocence. No evidence was led in defence.

7. The trial Court, on consideration of the material on

record, more particularly the evidence of Gurdev Singh (P.W.2), held the appellants guilty and convicted and sentenced them, as mentioned above.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. While arguing before us, learned counsel for the appellants has contended that the presence of Gurdev Singh at the place of occurrence is doubtful as it is highly improbable that after the occurrence, this witness will go to sleep and will get up on the next morning to find that his brother had died. He further argued that three grown up children of the deceased, who were best witnesses, have not been examined. Finally, it has been contended that there is not even an iota of evidence on file to show that there were illicit relations between accused Satnam Kaur and accused Balwinder Singh Sandhu and in the absence of any evidence on this account, the case of the prosecution falls on ground and the accused are entitled to acquittal.

10 On the other hand, learned counsel for the State reiterated the stand taken in the trial Court and argued that accused Balwinder Singh Sandhu was a police officer, who was locally posted at Police Station Mahilpur, and it was highly improbable to false implicate such an officer. He submitted that the judgment of the trial Court was liable to be upheld.

11. We have given our thoughtful consideration to the contentions of both the sides. Before proceeding further with the

case, we would like to go through the evidence of Gurdev Singh (P.W.2), who is author of the First Information Report. In his examination-in-chief, he reiterated the allegations made in the First Information Report. In his cross-examination he stated that the deceased used to stop accused Balwinder Singh Sandhu from visiting his house and in spite of that the accused did not resist, but he was confronted with his statement (Exhibit P.E) wherein it was not so recorded. He further stated that he was not on visiting terms with the deceased for the last 15/20 years. Their houses are adjacent to each other having an intervening wall, for which there was a dispute. Dispute was settled about 4/5 years before the incident and a writing was recorded in this regard on the intervention of the Panchayat. Daughter of this witness was married 4/5 months before this occurrence, but the deceased or his family members were not invited to attend that marriage. The ashes of the deceased were taken to Kiratpur Sahib by his son. Gurdev Singh offered his company to the son of the deceased to immerse the ashes, but his son refused to take him along with him. The deceased had three children, aged around 20, 18 and 15 years. There are a number of other houses surrounding the house of the deceased. He did not get down from the roof of his house to save his brother when the latter was raising an alarm `Na Maaro, Na Maaro'. He himself also did not raise any alarm to inform the other neighbours regarding the occurrence. He also did not raise any alarm when the deceased was being taken in a vehicle from the place of occurrence by the

accused-persons. According to this witness, 50/60 persons had gathered there. At about 7.30 P.M/ 8 P.M he went to sleep and got up at 6 A.M in the morning. It was around 7.30 A.M on the next morning that he came to know about the death of his brother and he took the Sarpanch along with him to report the matter to the police. He had seen Satnam Kaur taking early morning tea for her husband Balihar Singh, who used to sleep in the `Haveli'. Finally, he has also admitted the fact that accused Balwinder Singh Sandhu had attended the marriage of his sister's daughter, which was also attended by the daughter of this witness. He has also admitted some of the photographs and Exhibit D-7, which was a compromise reached between this witness and the deceased, which was got effected by accused Balwinder Singh Sandhu, who was posted at Police Station Mahilpur at that time. So, from this cross-examination it is apparent that complainant Gurdev Singh was not having cordial relations with his brother. They were not on visiting terms for the last 15/20 years. He did not make any effort to save the deceased when he was being administered poison as per the case of the prosecution. On the contrary, there is evidence on the file that complainant Gurdev Singh and his brother Balihar Singh (deceased) were at serious dispute with each other and their matter had been compromised with the intervention of police. It is further allegation of the complainant that accused Satnam Kaur was having illicit relations with the other accused Balwinder Singh Sandhu. Nothing has come on the file to corroborate this allegation of the complainant. Jaspal

Singh (P.W.3) was another witness of the prosecution, who could have put some light on the theory of illicit relationship. However, he has said nothing regarding this relationship nor any question had been put to him to this effect. The best evidence in such type of circumstances could have been the grown up children of the deceased. Kamaljit Kaur, eldest daughter of the deceased, was kept as a witness. However, she was given up by the prosecution for the reasons best known to them. It is further story of the prosecution that one Jarnail Singh (P.W) had tried to give water to the deceased, but accused Satnam Kaur did not allow him to do so. Even this witness has been withheld by the prosecution and not examined in Court.

12. In their defence, the accused persons have stated that because of the old enmity with the complainant, they have been falsely implicated. As stated above, accused Balwinder Singh Sandhu in his statement recorded under Section 313 of the Code of Criminal Procedure stated that the deceased was like his brother. He used to meet him occasionally. He treated accused Satnam Kaur as his sister. He used to meet the deceased and his family on all the ceremonies. Inspector Nirmal Singh was incharge of Police Station Mahilpur and he was subordinate to him. Inspector Nirmal Singh had grudge against him and on that account he was involved in this case falsely. Satnam Kaur, in her statement under Section 313 of the Code of Criminal Procedure stated that complainant Gurdev Singh was not on good terms with the family of the deceased for the last so many years. They

had adjacent houses. A dispute was going on between them regarding the common wall. According to her, the complainant and the deceased were not on good terms and did not attend even marriage functions in their families. Balwinder Singh Sandhu treated her as his sister and the deceased as his brother. She and her husband used to sleep in the `Haveli' for looking after their cattle. She used to serve tea daily in the morning. As usual, the deceased went to sleep in the `Haveli' on June 19, 1997. On June 20, 1997, when she went to serve him tea early in the morning, she saw him dead in the `Haveli'. She raised an alarm and many persons had assembled there. Dead body of Balihar Singh was brought to his house. She doubted Gurdev Singh for the death of her husband. Gurdev Singh, in connivance with the police, got this case planted on her.

13. The defence version given by both the accused fits into the cross-examination of complainant Gurdev Singh (P.W.2), who himself admitted that Satnam Kaur had suspected him for the death of her husband. He also admitted regarding his old enmity with the deceased. It has also been admitted by Gurdev Singh that Balwinder Singh Sandhu had been attending family functions of the deceased and had also gone to attend the marriage of his sister's daughter, which was also attended by the daughter of the complainant.

14. Dr.Jagjit Singh (P.W.1) had conducted post mortem examination on the dead body of Balihar Singh. As per report of the Chemical Examiner (Exhibit P.D), organo phosphorus, a group

of insecticide, was detected in stomach, liver spleen, kidney, small and large intestine and blood of Balihar Singh, which was the cause of his death. However, as per the evidence of Dr.Jagjit Singh (P.W.1), no mark of injury had been found on the person of the deceased which could lead to the conclusion that there was some struggle by the accused, which is usual in the case of forcible administration of poison. Under the circumstances, it cannot be inferred that the accused persons had administered poison to the deceased

15. For the reasons recorded above, this appeal filed by appellants Satnam Kaur and Balwinder Singh Sandhu is allowed as there is no clinching evidence against them and they are acquitted of the charges framed against them by setting aside the impugned judgment and the sentence order passed by the learned Additional Sessions Judge, Hoshiarpur.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 23, 2007.

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